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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1486

JACK A. GULLO,

*Petitioner,*

v.

THE HONORABLE AUBREY E. ROBINSON, JR.,
JUDGE OF THE UNITED STATES DISTRICT COURT
for THE DISTRICT OF COLUMBIA,

*Respondent.*

**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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*Respondent.*

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**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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To the Honorable, Chief Justice and Associates of the Supreme Court of the United States.

Jack A. Gullo, the petitioner herein, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above cause on February 7, 1973, denying petitioner's petition for rehearing upon the order entered January 10, 1973, (Appendix A, *infra*, pages 1-2).

## ISSUE PRESENTED FOR REVIEW

1. Whether Respondent in a proceeding brought under *Title 42 U.S.C. Section 1983* is required to convene a Three Judge Court under *Title 28 U.S.C. 2284* to grant petitioner injunctive and declaratory relief against the courts of the District of Columbia in giving recognition and legal effect to a marriage, which is prohibited and is declared a nullity under *Title 30 Section 101, D.C. Code, Act of Congress Mar. 3, 1901*, 31 Stat. 1931?

2. Whether the courts of the District of Columbia are denying petitioner the due process and equal protection of the law under the 14th Amendment of the Constitution of the United States and violating petitioner's Civil Rights under *Title 42 U.S.C. 1983*, by giving recognition and legal effect to said void marriage, by means of which petitioner is being deprived of his property and legal rights and causing him great and present irreparable harm?

## CONSTITUTION AND STATUTES INVOLVED

I. *Amendment XIV – Section 1.* . . . nor shall any State deprive any person of property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

II. *Title 42 U.S.C. Section 1983:* Every person who, under color of any statute, ordinance, regulation, custom, or usages, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities, secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

III. *Title 28 Section 2284:* In any action or proceeding required by Act of Congress to be heard and determined by a district court of three judges the composition and procedure of the court, except as otherwise provided by law, shall be as follows:

(3) In any such case in which an application for an interlocutory injunction is made, the district judge to whom the application is made, may, at any time, grant a temporary restraining order to prevent irreparable damage. . . . It shall contain a specific finding, based upon evidence submitted to such judge and identified by reference thereto, that specified irreparable damage will result if the order is not granted.

(5) . . . . The action of a single judge shall be reviewable by the full court at any time before final hearing.

IV. *Title 28 Section 1343:* The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunities secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

*NEW MEXICO STATUTE, ANNOTATED,* 1953 Comp. *Sec. 22-7-4- Residence Requirement* (amending Sec. 25-704)(*Heckathorm v. Heckathorn,* 77 N.M. 369, *423 P2d 410 (1967).*

> The plaintiff in action for dissolution of the bonds of matrimony must have been an actual resident, in good faith, of the state for one (1)

year next preceding the filing of his or her complaint; . . .

*DISTRICT OF COLUMBIA CODE, 1961 ed:*

*DISTRICT OF COLUMBIA CODE, 1961 ed., Title 30 Section, 101, Act of Congress Mar. 3, 1901, 31 Stat. 1391: (Simmons v. Simmons,* 57 App. D.C. 216, 19 F 2d 690; *Frey v. Frey,* 61 App. D.C. 332, 59 F 2d 1046.)

> "The following marriages are prohibited in the District of Columbia and shall be absolutely void ab initio, without being so decreed, and their nullity may be shown in any collateral proceedings, namely; "

> "The marriage of any persons either of whom has been previously married and whose marriage has not been terminated by death or a decree of divorce."

## OPINIONS BELOW

Neither the United States District Court for the District of Columbia nor the United States Court of Appeals for The District of Columbia Circuit rendered an opinion in this cause.

## JURISDICTION

The jurisdiction of the United States Court for the District of Columbia was invoked under *Title 28 U.S.C. Section 1343 (3).* Petitioner brought the action under *Title 42 U.S.C. Section 1983.*

The judgment of the United States Court of Appeals for the District of Columbia Circuit was entered January

10, 1973, denying petitioner's petition To Have Respondent Convene a Three Judge Court Under *Title 28 U.S.C. Section 2284.* Rehearing was denied February 7, 1973.

The jurisdiction of this Court is invoked under *Title 28 U.S.C. Section 1254(1).*

## STATEMENT OF THE CASE

### I

### PROCEEDINGS IN COURT BELOW AND IN FORMER ACTIONS.

The jurisdiction of the United States Court for the District of Columbia was invoked under *Title 28 U.S.C. Section 1343(3).* Petitioner brought this action under *Title 42 U.S.C. Section 1983.* On July 7, 1972, petitioner filed his complaint, *Civil Action No. 1377-72,* asking the said court to grant him injunctive and declaratory relief against the courts of the District of Columbia and Miriam A. Hirst (also known as, Gullo - Brown - Ruths), who are giving recognition and legal effect to Hirst's marriage to the petitioner, which was prohibited and is declared a nullity under *Title 30 Section 101, D.C. Code, Act of Congress Mar. 3, 1901, 31 Stat. 1931.* See Appendix A, *infra,* pages 3, 6, *Gullo v. Hirst,* (D.C. App. Appeal No. 6210, decided 6/7/-1972, Rehearing denied 7/5/1972,) *291 A 2d 504; Gullo v. Hirst, D.C. App., 207 A 2d 662, (1965).* The said courts have refused and continue to refuse to declare petitioner's marital status and the status of his son born of said marriage and to declare the property and legal rights acquired of said void marriage.

Annexed to petitioner's petition to the United States Court of Appeals for The District of Columbia Circuit to

have Respondent convene a Three Judge Court are the following Exhibits:

1. Order entered October 3, 1972, by Respondent dismissing petitioner's complaint for Declaratory Judgment and For Injunctive Relief.

2. Order entered October 3, 1972, by Respondent denying petitioner's Application For Convening a Three Judge Court.

3. Petitioner's Application To Convene Three Judge Court filed September 8, 1972.

4. Copies of decisions *In Gullo v. Hirst, D.C. App.* (Appeal No. 6210, decided 6/7/1972,) *291 A 2d 504; Jack A. Gullo v. Miriam A. Brown* (Hirst) *82 N.M. 402, 483 P 2d 293,* (decided March 17, 1971); *Gullo v. Hirst, 207 A 2d 662 (D.C. App. 1965.)*

5. Petitioner's Affidavit of Statement of Facts.

6. Hirst's Verified Petition for Change of Minor's Name From "Gullo" to "Hirst", and stating under oath her place of residence from her birth to September 21, 1972, inclusive, Appendix A, *infra,* page 9.

7. Document signed and certified by Hirst of her place of residence from 1-1-1936 to August 7, 1957, inclusive.

8. Hirst's Marriage Certificate to her former husband, John J. Brown, Appendix, A, *infra,* page 11.

9. Hirst's Application for Marriage License – Marriage License – Marriage Certificate to petitioner, Jack A. Gullo. Appendix A, *infra,* page 12.

The certified court reporter's transcripts of the testimony of Miriam A. Hirst, of her husband, John J. Brown, and of petitioner, Jack A. Gullo, taken in Hirst's divorce action against the petitioner in Virginia, which have been filed and made part of the record in all prior actions, including in all actions in the courts of the District of Columbia, show the uncontroverted fact that neither Hirst nor her husband, John J. Brown, was ever a resident of the State of New Mexico.

In all prior actions, the said courts arbitrarily have relied upon the unfounded conclusion of the Virginia divorce court that Hirst's prior New Mexico divorce on February 17, 1951, was valid. The courts of the District of Columbia do not have the power or jurisdiction to give recognition and legal effect to a marriage which is prohibited and is declared a nullity under *Title 301 Section 101, D.C. Code, supra,* by arbitrarily invoking the doctrine of *res-judicata.*

The findings of fact made by the *Supreme Court of New Mexico, In Gullo v. Brown,* 82 N.M. 402, 483 P 2d 293, (decided 3/7/1971) show and proves the nullity of Hirst's New Mexico divorce decree, which further proves the nullity of her subsequent marriage to petitioner in the District of Columbia.

## THE UNCONTROVERTED FACTS IN THE CASE, ACKNOWLEDGED BY MIRIAM A. HIRST.

The record in the proceedings in all prior actions, including the actions in the courts of the District of Columbia, show: that on May 31, 1947, Miriam A. Hirst and John J. Brown entered into a lawful marriage at Mt. Carmel, Pa.; that they continued to reside as husband and wife in Mt.

Carmel, Pa. until about 1948, when Hirst left Brown in their home in Mt. Carmel, Pa., and moved to the District of Columbia; that during and while Hirst was a resident of the District of Columbia, *1948 to December 1954, inclusive*, she fraudulently secured a New Mexico divorce decree on February 17, 1951, on her complaint filed on January 15, 1951; that on March 31, 1951, Hirst swore falsely under oath that she had no former marriage in her Application for the Marriage License, Appendix A, *infra*, page , in the U.S. District Court for the District of Columbia thereby not disclosing her New Mexico divorce decree from Brown; that pursuant to this marriage license Hirst married petitioner in the District of Columbia on April 28, 1951; that this marraige was prohibited and is declared a nullity under *Title 30 Section 101, D.C. Code, Act of Congress Mar. 3, 1901, 31 Stat. 1391.*

In *Gullo v. Brown (Hirst), the Supreme Court of New Mexico, 483 P 2d 293, supra*, quoted at length from *Gullo v. Hirst, D.C. App. 207 A 2d 662*, (1965) and then proceeded to make its independent findings of facts and found at page *295:*

"Miriam A. Hirst was never a resident of the State of New Mexico" and held at page *297:*

> "Miriam practiced fraud on the New Mexico divorce court in securing the divorce from her husband, John J. Brown."

and concluded at page *297:*

> "Indeed, the long, tangled, and vexatious course of litigation, including this case, could be said to stem in large measure from the fraud practiced on the District Court of Bernalillo (N.M.) in 1951."

The New Mexico Supreme Court affirmed the judgment of the lower New Mexico court upon the ground that Gullo cannot attack Hirst's divorce from Brown since Gullo is a stranger to said Hirst's New Mexico divorce decree.

The said findings of facts made by the Supreme Court of New Mexico are acknowledged under oath by Hirst in her *Verified Petition* For Change of Minor Son Name from "Gullo" to "Hirst", which she filed *on September 21, 1971, In The Circuit Court of Volusia County, Florida, Appendix A, infra,* page 9, in which she states under oath:

> "Petitioner, Miriam Anne Hirst, *resided since birth until 1948 in Mt. Carmel Pennsylvania; 1948 to 1954 in Washington, D.C.;* 1954 to 1963 in Annandale, Virginia. (emphasis supplied)
>
> "Charles Gullo was born on June 28, 1955, in Washington, D.C., and that Petitioner, Miriam Anne Hirst, is the natural mother of Charles Gullo and the natural father is Jack A. Gullo."

## REASONS FOR GRANTING THE WRIT

Petitioner relies upon the reasons stated and applied by this Court in *Mitchum v. Foster, et-al, 92 S. Ct. 2151, (6/9/1972)* for granting petitioner the Writ. Petitioner is entitled to have Respondent convene a Three Judge Court to grant him the declaratory and injunctive relief he seeks.

Petitioner seeks to enjoin the courts of the District of Columbia and Hirst from giving recognition and legal effect to Hirst's marriage to him by means of which petitioner is being deprived of his property and legal rights, without the due process and equal protection of the law.

It is the public policy of the District of Columbia and the duty of its courts to declare the marriage a nullity, when it appears from the proofs in the record, as herein, that the marriage is a nullity under *Title 301 Section 101, D.C. Code, supra.* The courts of the District of Columbia owe this duty equally to all residents of the District of Columbia, including the petitioner herein. In refusing to declare the marriage a nullity and thereby allowing Hirst to deprive petitioner of his property and legal rights under said void marriage, the courts of the District of Columbia are denying petitioner the due process and equal protection of the law under the 14th Amendment of the Constitution of the United States and also are violating his Civil Rights under *Title 42 U.S.C. Section 1983.*

The uncontroverted facts in the record, which are acknowledged by Hirst, show that neither Hirst nor her husband, John J. Brown was ever a resident of the State of New Mexico and that she practiced fraud on the New Mexico divorce court in securing the divorce from her husband, John J. Brown, *Gullo v. Miriam A. Brown (Hirst) 82 N.M. 402, 483 P 2d 293 (1971).* The *New Mexico Statute 1951, ch. 7, Section 22-7-4, Residence Requirement for Divorce, Heckathorn v. Heckathorn, 77 N.M. 428, 423 P 2d 410 (1967)* declares Hirst's divorce decree from her husband, John J. Brown, a nullity for lack of jurisdiction. No decree of court is required to declare such divorce decree a nullity.

Hirst's void New Mexico divorce decree is not entitled to any recognition in the District of Columbia under the Full Faith and Credit Clause of the Federal Constitution or upon principles of comity, *Simmons v. Simmons, 57 App. D.C., 19 F 2d 690, Gage v. Gage, (D.C., D.C.) 80 Federal Supp. 987 (1950).* Hirst's New Mexico divorce

decree is invalid in the State of New Mexico and is entitled to no recognition in the District of Columbia, *Bell v. Bell, 181 U.S. 179, 21 S.Ct. 553, Streitwolf v. Streitwolf, 181 U.S. 179, 21 S. Ct. 553.* .

It is a violation of the due process and equal protection of the law under the 14th Amendment of the Constitution of the United States for the courts of the District of Columbia to give recognition to Hirst's New Mexico divorce decree which is a nullity by New Mexico staute, *50 C.J.S., Judgments, Section 889(a).*

A judgment is neither res-judicata nor constitutes a bar to further litigation, where as herein, Hirst's New Mexico divorce decree is a nullity under New Mexico statute and the New Mexico divorce court rendering it acted beyond its authority and was without jurisdiction, *50 C.J.S., Judgments, Section 617.*

The laws and public policy of the District of Columbia governs the courts in the District of Columbia in determining the validity of Hirst's marriage to the petitioner entered in the District of Columbia on April 28, 1951, *Carr v. Carr, (D.C.,D.C.) 82 Fed. Supp. 398.*

Hirst did not disclose her said void New Mexico divorce decree when she swore falsely under oath in her Application for the Marriage License at the Clerk's Office of the U.S. District Court for the District of Columbia that she had no former marriage. Such false swearing is declared perjury under *Title 30-Section 110, D.C. Code.*

Since Hirst's marriage to Brown was not dissolved by her said New Mexico divorce decree entered on February 17, 1951, and her marriage to Brown has not been terminated by death, Hirst's subsequent marriage to the

petitioner in the District of Columbia was prohibited and is declared a nullity under *Title 30 Section 101, D.C. Code, supra.* This statute further provides that no decree of court is required to declare such marriage a nullity. *Section 30-101, D.C. Code, supra,* was interpreted and applied in *Simmons v. Simmons, 57 App. D.C. 216, 19 F 2d 690,, Frey v. Frey, 61 App. D.C. 232, 59 F 2d 1046.* It was therein and always has been the law in the District of Columbia that such a prohibited marriage always remains a nullity; that the courts do not have the power or authority to give it recognition or legal effect; that it is the public policy and the duty of the courts to declare it a nullity, when the proofs in the record, as herein, show the marriage is a nullity; that no legal rights or property are acquired of such void marriage; except to have legitimacy of the issue born of such a void marriage declared under what is now *Title 16 Section 997, D.C. Code, Act of Congress Mar. 3, 1901, 31 Stat. 1341, Frey v. Frey, Simmons v. Simmons, supra.*

Since the proofs in the record herein show that Hirst's marriage to petitioner is a nullity, any disguise to make it appear valid by any legal fiction such as Full Faith and Credit, or res-judicata, or otherwise, is itself a violation of the due process and equal protection of the law, *Griffin v. Griffin, (App. D.C.) 327 U.S. 220, 60 S. Ct. 556.* The history of this case shows that petitioner's cause has not been justly determined because the courts have ignored and have failed to ascertain the truth, which is shown in its records, as prescribed by this Court in its order entered on November 20, 1972, *Federal Rules of Evidence, Rule 102– Purpose and Construction.*

The courts of the District of Columbia should not be closed to petitioner, who is being caused great and present

irreparable harm by a marriage, which is declared a nullity by Act of Congress.

## CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

JOSEPH S. GULLO, and

J. A. LOWE,

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1515 North Courthouse Road
Arlington, Virginia 22201
Phone: 525-4900

*Attorneys for Petitioner.*

Date: April 1973.

# APPENDIX A

## United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 72-2025 September Term, 19 72

Jack A. Gullo,
Petitioner

v.

The Honorable Aubrey E. Robinson, Jr.,
Judge of the United States District Court
for the District of Columbia

Respondent

Before: Tamm and Leventhal, Circuit Judges.

O R D E R

On consideration of petitioner's petition for rehearing, it is

ORDERED by the Court that petitioner's aforesaid petition is denied.

Per Curiam

For the Court:

HUGH E. KLINE
Clerk

Appendix A, page 1

A. 2

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 72-2025 September Term, 19 72

Jack A. Gullo,
Petitioner

v.

The Honorable Aubrey E. Robinson, Jr.,
Judge of the United States District Court
for the District of Columbia
Respondent

United States Court of Appeals
for the District of Columbia Circuit
FILED JAN 10 1973
HUGH E. KLINE
CLERK

Before: Tamm and Leventhal, Circuit Judges.

O R D E R

Upon consideration of the petitioner's petition for mandamus, it is

ORDERED by the Court that this aforesaid petition is denied.

Per Curiam

Appendix A, page 1

DISTRICT OF COLUMBIA COURT OF APPEALS

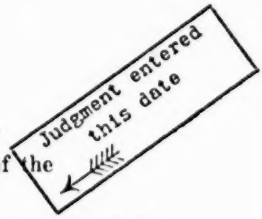
291 A2d 504,

No. 6210

JACK A. GULLO, APPELLANT,

v.

MIRIAM A. HIRST and
BRUCE E. LAMBERT, APPELLEES.




Appeal from the Superior Court of the District of Columbia

(Argued March 20, 1972 Decided June 7, 1972)

*Joseph S. Gullo* for appellant.

*Bruce E. Lambert* for appellee Hirst and pro se.

Before HOOD, Chief Judge, and KERN and YEAGLEY, Associate Judges.

PER CURIAM: This appeal, according to appellant's brief, is from an order denying his motion to vacate a previous order which dismissed his amended complaint. The amended complaint, according to the brief, sought (1) to have declared null and void the marriage of appellant and appellee Hirst, (2) to have determined the status of a child born of that marriage, and (3) to have declared the "legal and property rights" acquired by said appellee from the alleged void marriage.[1]

---

[1] We accept appellant's statement of the relief he sought, because of the difficulty in ascertaining from the voluminous pleadings the precise nature of appellant's action and the relief sought. Appellee Lambert is the attorney for appellee Hirst. It is not clear why he was made a party to the action. We shall hereafter refer to appellee Hirst as the appellee.

Appendix A, page 2

Accepting appellant's statement of the relief he sought, it is plain he seeks to have declared void his marriage with appellee and to accomplish this he seeks to have appellee's divorce in New Mexico, which occurred prior to her marriage to appellant, declared void with the result that she was incapable of entering into a valid marriage with appellant.

It is evident that appellant in this action is seeking to relitigate an issue which more than 7 years ago we held he was barred from relitigating under the doctrine of res judicata. See *Gullo v. Hirst*, D.C.App., 207 A.2d 662 (1965). A similar ruling had been made a year before in *Gullo v. Hirst*, 332 F.2d 178 (4th Cir. 1964). An extended history of the litigation is set forth in our previous opinion.

Appellant seeks to avoid the effect of our ruling and that of the Fourth Circuit by reason of a decision of the Supreme Court of New Mexico in *Gullo v. Brown*, 82 N.M. 412, 483 P.2d 293 (1971). It appears that after failing in this court and in the Virginia courts (state and federal) to obtain relief, appellant, with what the Supreme Court of New Mexico characterized as a "single minded purpose and persistence that is truly remarkable",[2] filed suit in New Mexico in an attempt to have declared void the New Mexico divorce between appellee and her former husband, one Brown.[3] Summary judgment went against appellant and he appealed. The Supreme Court of New Mexico after quoting at length from the opinion of this court and making reference to the opinion of the Fourth Circuit Court of Appeals said:

> Obviously, the application of the doctrine of *res judicata* bars appellant from obtaining the relief that he seeks. . . . [*Gullo v. Brown, supra* at 296.]

[2] Gullo v. Brown, 82 N.M. 412, 483 P.2d 293, 295 (1971). This court and the Fourth Circuit took a less charitable view of appellant's conduct.

[3] This divorce occurred in 1951.

The court went on to say that aside from res judicata, appellant had no standing to attack the divorce decree because he was not a party to it and had no right which was affected by it at the time of its entry.

We fail to see what comfort appellant gets from the New Mexico decision. It is true that in the concluding paragraphs of that decision there is indication the court felt appellee practiced fraud in obtaining her New Mexico divorce, but the fact remains that appellant was held barred from attacking the divorce.

The trial court properly dismissed appellant's complaint.

*Affirmed.*

A. 6

## DISTRICT OF COLUMBIA COURT OF APPEALS

207 A2d 662

No. 3640

JACK ANTHONY GULLO, APPELLANT,

v.

MIRIAM ANNE HIRST, APPELLEE.

Appeal from the District of Columbia
Court of General Sessions

(Argued February 8, 1965 Decided March 11, 1965)

*Joe S. Gullo* for appellant.

*Bruce E. Lambert* for appellee.

Before HOOD, Chief Judge, and QUINN and MYERS, Associate Judges.

HOOD, *Chief Judge:* The parties to this appeal were married in 1951 in the District of Columbia, and will be hereafter referred to as husband and wife.[1] In November 1960 the wife filed suit against the husband in the Circuit Court of Fairfax County, Virginia, alleging that the parties "were lawfully married" and seeking an absolute divorce. To this complaint the husband filed an answer which denied the allegation that the parties were lawfully married, and he also filed a "plea for annulment of marriage," alleging that at the time of their marriage the wife was then lawfully married to one Brown. This allegation was based on the claim that a divorce obtained by the wife from Brown in New Mexico was void for lack of jurisdiction.

Portions of the transcript of the Virginia proceedings, included in the record, show that the circumstances of the New Mexico divorce were thoroughly inquired into by the

[1] After the Virginia divorce hereafter referred to, the wife remarried.

Continued on page 3

Virginia court. At the conclusion of the trial the Virginia court on April 28, 1961, entered a final decree dismissing the husband's plea for annulment of marriage and granting the wife a divorce. The divorce was granted upon a specific finding that the parties were lawfully married in the District of Columbia.

The husband then petitioned the Supreme Court of Appeals of Virginia for an appeal. When his petition was denied on October 10, 1961, he unsuccessfully sought a writ of certiorari from the Supreme Court of the United States.[2]

He then brought an action for annulment of marriage in the District of Columbia. Summary judgment went against him on the ground that the Virginia judgment was res judicata. He appealed to this court and we reversed on the ground that the trial court lacked jurisdiction because of the husband's lack of residence for the jurisdictional period.[3]

The husband's next move was to institute a suit in the United States District Court for the Eastern District of Virginia for declaratory relief, specifically asking the court to declare his marital status. In its memorandum opinion dismissing the action, the District Court on September 11, 1963, ruled that the issues sought to be raised had been raised and decided in the prior proceedings in the Fairfax County Court. The husband appealed and the United States Court of Appeals for the Fourth Circuit affirmed, holding that the matter sought to be litigated in the District Court was res judicata.[4]

While the litigation in the Virginia federal court was pending, the husband brought the action which is now before us. His complaint for annulment of marriage raised the same issues concerning the validity of the New Mexico divorce which had been raised and litigated in the Fairfax County Court and which he had attempted to relitigate in the federal court. Despite the rulings of the District Court and the Circuit Court of Appeals that the matter was res judicata, the husband brought the present action to trial in September 1964. The trial court, after hearing, dismissed the complaint on the ground that the judgment of

[2] *Gullo* v. *Gullo*, 368 U. S. 988, rehearing denied 369 U. S. 832 (1962).
[3] *Gullo* v. *Gullo*, D. C. App., 192 A.2d 126 (1963).
[4] *Gullo* v. *Hirst*, 332 F.2d 178 (4th Cir. 1964).

the Circuit Court of Fairfax County was res judicata as to all issues here raised. The husband then brought this appeal.

The mere recitation of the foregoing facts shows that the trial court's action was correct. No citation of authority is needed for the proposition that an issue once finally litigated by the parties in a court of competent jurisdiction cannot be relitigated by the parties in that court or in any other court. Otherwise there would be no end to litigation.

When the parties were before the Fourth Circuit Court of Appeals, that court said:

> The background of this case raises serious questions of abuse of process. While we must be careful to assure that the courts are always open to complaining parties, we have an equal obligation to see that its processes are not abused by harassing, or by recklessly invoking court action in frivolous causes or by foot dragging and delaying in order to deny or postpone the enjoyment of unquestioned rights. Lawyers have an obligation as officers of the court not to indulge in any of these practices. *Gullo* v. *Hirst*, 332 F.2d 178, 179 (4th Cir. 1964).

The foregoing language applies even more strongly to the case before us.

The wife has moved in this court for an allowance of counsel fees for services both here and in the trial court.[3] Ordinarily we would leave the question of counsel fees for services in the trial court to that court for determination, but in order to bring an end to vexatious litigation, we order that appellant pay to appellee for legal services here and in the trial court the sum of $1,000.

*Affirmed, with order for counsel fees.*

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[3] See D. C. Code 1961, § 16-911 (Supp. IV, 1965); *Tendler* v. *Tendler*, 56 App. D. C. 296, 12 F.2d 831 (1926).

A. 9

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR VOLUSIA COUNTY, FLORIDA

CASE NO.

IN RE: Change of Name of a minor child: CHARLES GULLO, to CHARLES HIRST

PETITION FOR CHANGE OF NAME

THE PETITIONER, CHARLES GULLO, by his next friend and natural mother, MIRIAM ANNE HIRST, and MIRIAM ANNE HIRST, natural mother, Individually; petition this Court to change the name of the minor child, CHARLES GULLO, to CHARLES HIRST, and allege:

1. The Petitioner, MIRIAM ANNE HIRST, and CHARLES GULLO are bona fide residents of and domiciled in Volusia County, Florida.

2. That Petitioner, MIRIAM ANNE HIRST, was born in Mt. Carmel, in the State of Pennsylvania.

3. The name of the father of Petitioner, MIRIAM ANNE HIRST, is Carl M. Ruths, deceased, and her mother's name is Stella Kraft, also deceased. Petitioner, MIRIAM ANNE HIRST, resided since birth and until 1948 in Mt. Carmel, Pennsylvania; 1948 to 1954 in Washington, D.C.; 1954 to 1963 in Annandale, Virginia; 1963 to 1966 in Aurora, Colorado; 1966 to present date in Daytona Beach, Florida.

4. That Petitioner, CHARLES GULLO, was born on June 28, 1955, in Washington, D.C., and that Petitioner, MIRIAM ANNE HIRST, is the natural mother of CHARLES GULLO, and the natural father is JACK A. GULLO. Petitioner, CHARLES GULLO, resided from birth to August, 1963, in Annandale, Virginia; August, 1963 to June, 1966 in Aurora, Colorado; June, 1966 to present date in Daytona Beach, Florida.

5. Petitioner, MIRIAM ANNE HIRST, is married to EDWIN L.

6. Petitioner, MIRIAM ANNE HIRST's name was previously changed from MIRIAM ANNE RUTHS BROWN to MIRIAM ANNE RUTHS, by Court Order in Bernalillo County, New Mexico, in 1950.

7. Petitioner, CHARLES GULLO's name has never been previously changed.

8. Petitioner, MIRIAM ANNE HIRST, is a housewife residing with her husband, EDWIN L. HIRST, and minor child, CHARLES GULLO, at 3150 South Atlantic Ave., Daytona Beach, Florida. Petitioner attended the following schools: Mt. Carmel, in Pennsylvania, and American University, in Washington, D.C.

9. Petitioners have never been adjudicated as bankrupt, or convicted of a felony; no money judgement has ever been entered against either Petitioner. The Petitioners have no criminal record or creditor who would be prejudiced by the granting of this Petition.

10. This Petition is filed for no ulterior or illegal purpose, and the granting of the Petition will not in any manner invade the property rights of others, whether partnership, patent, good will, privacy, trademark, or otherwise.

WHEREFORE, Petitioners pray that this Court enter an Order as follows:

To change the name of the minor child, CHARLES GULLO, to CHARLES HIRST.

Gene White

J. E. (Gene) White
COBLE, STEWART & MCKINNON
1025 Volusia Avenue
Daytona Beach, Florida
Attorney for Petitioners

/s/ Miriam Anne Hirst

MIRIAM ANNE HIRST, next friend, mother and natural guardian of CHARLES GULLO, a minor.

/s/ Miriam Anne Hirst

MIRIAM ANNE HIRST, Individually

Sworn to and subscribed before me this 2nd day of September, 1971.

/s/ Betty L. Hooper

Notary Public, State of Florida at Large

My Commission Expires: June 3, 1975

A. 11

No 48734 **The State of Maryland**

**City of Baltimore, Sct.**

**TO ALL WHOM IT DOTH OR MAY CONCERN:**

This is to Certify. That on the 31st day of May in the year one thousand Nine hundred and Forty-Seven a Marriage License No. 38936 was issued from the office of the Clerk of the Court of Common Pleas, authorizing any Minister of the Gospel, or any other person qualified by law, to perform the Rites of Marriage between a certain

John J.Brown

of Mt.Carmel State of Pennsylvania

Age Twenty-Two (22) Color White

Nativity Pennsylvania Occupation Driller

Condition Single Relation None

and Miriam Ruths

of Mt.Carmel State of Pennsylvania

Age Twenty (20) Color White

Nativity Pennsylvania Occupation Machine Operator

Condition Single Relation None

Name of person consenting if groom is a minor

Name of person consenting if bride is a minor

*And afterwards, to wit:* on the 2nd day of June in the year one thousand Nine hundred and Forty-Seven the following certificate was filed in the Clerk's Office of said Court, to wit:

I HEREBY CERTIFY, That on this 31st day of May, one thousand Nine hundred and Forty-Seven at Baltimore, Md. John J.Brown and Miriam Ruths were by me united in Marriage, in accordance with the License issued by the Clerk of the Court of Common Pleas for Baltimore City in the State of Maryland.

George L.Hopkins
Minister of the Gospel, Official Character

As it appears by the Record of Marriages in the Clerk's Office of the Court of Common Pleas which Record is now in my custody and keeping.

*IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the Court of Common Pleas, this*

16th day of June 1966

Frank C. Roley
Clerk of the Court of Common Pleas

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No. 354720

## Application for License

DISTRICT OF COLUMBIA, ss:

I, Miriam A. Ruths

applicant for the issuance of a Marriage License to the persons named herein, do solemnly swear (affirm) that the statements to the following interrogatories are true, to the best of my knowledge and belief: So Help Me God.

| | MALE | FEMALE |
|---|---|---|
| Name | Jack Anthony Gullo | Miriam Anne Ruths |
| Age | 26 years | 23 Ye |
| Color | White | White |
| Relationship | None | |
| Former marriages | None | None |
| Residence | Mount Morris, N. Y. | Mt. Carmel, Pa. |

Witness:

Miriam Anne Ruths

Subscribed and sworn to before me this 30th day of March, 19[illegible]

Officiating Clergyman: Donald F. Keith

HARRY M. HULL
CHARLES E. STEWART, Clerk.
By [illegible] Deputy Clerk

No. 354720

## Marriage License

To Reverend Donald F. Keith

authorized to celebrate marriages in the District of Columbia, GREETING:

You are hereby authorized to celebrate the rites of marriage between

Jack Anthony Gullo of Mount Morris, N.Y.

Miriam Anne Ruths AND Mt. Carmel, Pa.

of

and having done so, you are commanded to make return of the same to the Clerk's Office of the District Court of the United States for the District of Columbia within Ten days, under a penalty of $50 for default therein.

WITNESS my hand and seal of said Court, this 31st day of April, anno Domini 1951

HARRY M. HULL
CHARLES E. STEWART, Clerk.
By [illegible] Deputy Clerk

No. 354720

## Return

I, Reverend Donald F. Keith who have been duly authorized to celebrate the rites of marriage in the District of Columbia, do hereby certify that, by authority of license of corresponding number herewith, I solemnized the marriage of Jack Anthony Gullo and Miriam Anne Ruths named therein, on the 28th day of April, 1951 at 611 Maryland Avenue, N.E. (Name of street, and street address, etc.) in said District. 5/1/51.

Rev. Donald F. Keith